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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 726

CHARLENE MITCHELL, COMMUNIST PARTY, USA,
COMMUNIST PARTY OF MINNESOTA, *et al.*,

Appellants,

—v.—

JOSEPH L. DONOVAN, Secretary of State
of the State of Minnesota, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

BRIEF FOR APPELLANTS

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—v.—

JOSEPH L. DONOVAN, Secretary of State of the State of Minnesota, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

BRIEF FOR APPELLANTS

Opinions Below

The initial opinion, dated October 2, 1968, which granted a requested order requiring appellee, Joseph L. Donovan, to place the names of appellant presidential and vice-presidential candidates on the November, 1968 Minnesota general election ballot is reported at 290 F. Supp. 642 (D. Minn. 1968). The second opinion, dated July 14, 1969, granting appellants' motion to amend the complaint and dismissing the complaint is reported at 300 F. Supp. 1145 (D. Minn. 1969). These opinions are set forth in the Appendix at pp. 73, 86.*

* Hereinafter, the citation "A" refers to the Appendix. The citation "App." refers to the appendices to the appellant's brief.

Jurisdiction

Jurisdiction of this Court to review the determination of the statutory three-judge court of the United States District Court for the District of Minnesota rests upon 28 U.S.C. Sec. 1253. The judgment was entered by the three-judge court of the United States District Court on July 14, 1969; notice of appeal was filed on August 13, 1969, in the United States District Court for the District of Minnesota in the third division; the case was docketed on October 11, 1969; and probable jurisdiction was noted by this Court on January 12, 1970.

Statutes Involved

1. 50 U.S.C.A. 841 provides:

Sec. 841. Findings and declarations of fact

The Congress finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement. Its members have no part in determining its goals, and are not permitted to voice dissent to party

objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination with respect to its objectives and methods, and are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchal chieftains. Unlike political parties, the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members. The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed. Aug. 24, 1954, c. 886, Sec. 2, 68 Stat. 775.

2. 50 U.S.C.A. 842 provides:

Sec. 842. Proscription of Communist Party, its successors and subsidiary organizations

The Communist Party of the United States, or any successors of such party regardless of the assumed name, whose object or purpose is to overthrow the

Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force and violence, are not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party or to any subsidiary organization by reason of the laws of the United States or any political subdivision thereof, are terminated: *Provided, however,* That nothing in this section shall be construed as amending the Internal Security Act of 1950, as amended. Aug. 24, 1954, c. 886, Sec. 3, 68 Stat. 776.

Questions Presented

1. Whether the three-judge court erred in dismissing the complaint on the ground of mootness, in view of the fact that there is uncontradicted evidence that the appellant Communist Party of Minnesota will participate in future Minnesota elections, and that the appellee Attorney General of the State of Minnesota has formally established State policy that 50 U.S.C. §§841 and 842 (Communist Control Act of 1954) prohibits appellants from appearing on any Minnesota election ballots, by a formal public opinion of the Attorney General to this effect and by maintaining this position before the three-judge court after the three-judge court granted temporary relief.

2. Whether 50 U.S.C. §842 of the Communist Control Act of 1954 bears the interpretation advanced in the court below by the United States Attorney for the District

of Minnesota as *amicus curiae* in order to avoid the constitutional questions which this case presents.

3. Whether 50 U.S.C. §§841 and 842 are bills of attainder in violation of Article 1, Section 9, Clause 3 of the U. S. Constitution, and when applied by the States, is a violation of Article 1, Section 10, Clause 1 of the U. S. Constitution, and an *ex post facto* law in violation of Article 1, Section 9, Clause 3 of the U. S. Constitution, and when applied by the States is a violation of Article 1, Section 10, Clause 1 of the U. S. Constitution.

4. Whether 50 U.S.C. §§841 and 842 violate freedom of speech, press, assembly and petition guaranteed by the First Amendment to the U. S. Constitution.

5. Whether 50 U.S.C. §§841 and 842 violate due process of law as protected by the Due Process Clause of the Fifth Amendment to the U. S. Constitution by not being reasonably restricted to the evil which they purport to control.

6. Whether 50 U.S.C. §§841 and 842 violate procedural due process of law as protected by the Due Process Clause of the Fifth Amendment to the U. S. Constitution by depriving an organization of liberty and property without affording those affected a hearing.

7. Whether 50 U.S.C. §§841 and 842 are within the legislative power of Congress in that Article 2, Section 1, Clause 2 of the U. S. Constitution limits the power of the federal government to interfere with the qualifications of federal presidential electors, and in that Congress does not have the power under the U. S. Constitution to regulate state and local elections.

8. Whether the refusal to accept the nominating petitions from appellants denied them equal protection of the laws.

Statement of the Case

The Communist Party of the State of Minnesota, hereinafter called Communist Party of Minnesota, is an unincorporated association whose principal place of business is in Minneapolis, Minnesota, and is the Minnesota-Dakotas District of the Communist Party, USA, also an unincorporated association, whose principal place of business is New York, New York. The Communist Party of Minnesota held a duly convened statewide convention on or about June 23, 1968, in the State of Minnesota and elected six delegates and an alternate delegate to the national convention of the Communist Party, USA, which was held from July 4, 1968, to July 7, 1968 (A. 21). At the Communist Party of Minnesota convention a motion was passed that if the Communist Party, USA nominated a presidential ticket, that the Communist Party of Minnesota would endeavor to place the Communist Party, USA candidates on the ballot of the Minnesota general election to be held November 5, 1968 (A. 21).

The Communist Party of Minnesota obtained the required ten candidates for the office of presidential elector and duly qualified them:

1. Elmer Borman
2. Rose E. Bruns
3. Obadiah Cummins
4. James Erickson
5. Nels Gudbrandson
6. Vernon Hartwig
7. Clara Jorgensen
8. Trygve Larsen

9. Carl Lund
10. Betty M. Smith

The Communist Party, USA ratified and approved the required ten Minnesota presidential elector candidates selected by the Communist Party of Minnesota (A. 5, 21).

Minnesota Statute 202.09 requires that a nominating petition for a state office on a state ticket contain signatures equal to one percent of the entire vote of the state cast at the last preceding general election, or 2,000, whichever is the lesser.

The Communist Party of Minnesota organized a campaign to recruit the necessary signatures on a petition to place the names of the Communist Party, USA and the names of Mrs. Charlene Mitchell as Presidential candidate and Mr. Michael Zagarell as Vice-Presidential candidate on the ballot of the Minnesota general election, November 5, 1968 (A. 21). This nominating petition contained the names of the ten who had qualified as presidential elector candidates of the Communist Party of Minnesota (A. 16).

In Minnesota, the names of the presidential electors do not appear on the General Election ballot but the names of the party and party's presidential and vice-presidential candidates do appear on the ballot, and according to Minnesota Statute 208.04, the vote for the party candidates for President and Vice President shall be deemed a vote for that party's presidential electors as filed with the Secretary of State of the State of Minnesota.

On Sunday, September 8, 1968, the Communist Party of Minnesota successfully concluded its campaign to recruit the requisite 2,000 signatures on the Communist Party,

USA nominating petition. The nominating petition contained 2,394 signatures of eligible voters in the State of Minnesota (A. 22). On Monday, September 9, 1968, representatives of the Communist Party, USA and the Communist Party of Minnesota went to appellee Minnesota Secretary of State Joseph L. Donovan's office to file the nominating petition (A. 22).

Minnesota Statute 202.11(2) allows filing of presidential elector nominating petitions up to and including primary election day, which in this case was Tuesday, September 10, 1968. The nominating petition was therefore duly tendered within the time limits prescribed by Minnesota Statute 202.11(2).

Communist Party, USA and Communist Party of Minnesota representatives arrived at the Secretary of State's office during the noon hour and were informed by an office employee that their petition would be refused. Thereafter they tendered the nominating petition for filing to appellee Minnesota Secretary of State Joseph L. Donovan. Appellee Donovan refused to accept the petition, although he did examine the contents of the petition and satisfied himself that it was the nominating petition for the Communist Party, USA (A. 16-17, 19).

Appellee Donovan gave the appellants a written refusal to accept the petition, which read:

September 9, 1968

TO ANY AND ALL PERSONS PRESENTING A NOMINATING PETITION OF THE COMMUNIST PARTY FOR FILING WITH THE SECRETARY OF STATE OF MINNESOTA FOR THE PURPOSE OF NOMINATING PRESIDENTIAL ELECTORS FOR THE GENERAL ELECTION OF 1968:

Please be advised that upon the advice of the Attorney General of Minnesota and at his direction as a matter of law, I hereby officially refuse and reject said petition.

Signed: JOSEPH L. DONOVAN /s/
Secretary of State

Appellee Donovan also handed the attorney for the Communist Party representatives an opinion of the appellee Attorney General of Minnesota, Douglas M. Head, which said:

September 9, 1968

You have requested our opinion as to whether you should accept for filing a nominating petition for presidential electors submitted pursuant to M.S. 1967 Sec. 202.10 on behalf of the Communist Party of the United States.

Your attention is directed to the Communist Control Act, 50 U.S.C. § 841 (1954) which provides, in part, as follows:

The Congress finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a

conspiracy to overthrow the government of the United States. . . . therefore, the Communist Party should be outlawed.

Section 842 of the Communist Control Act declares that:

> The Communist Party of the United States, or any successors of such party regardless of the assumed name, whose object or purpose is to overthrow the government of the United States, or the government of any state, territory, district, or possession thereof, or the government of any political subdivision therein, by force and violence, are not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party or any subsidiary organization by reason of the laws of the United States or any political subdivision thereof, are terminated. . . .

In view of the above federal statutes, we are of the opinion that you should refuse to accept for filing the nominating petitions in question. However, any doubts relative to this matter can only be finally resolved by the courts pursuant to appropriate legal proceedings.

Douglas M. Head /s/
Attorney General
State of Minnesota

The facts of the tender and refusal of the nominating petition are set forth at A. 22-23. The written refusal of appellee Donovan and the opinion of appellee Head are set forth at A. 48-50.

Appellants then brought an action in the court below, seeking a temporary and permanent injunction requiring appellee Secretary of State Donovan to accept and file the aforesaid nominating petition and to include the names of appellant candidates Charlene Mitchell and Michael Zagarell together with their Communist Party designation on the November 5, 1968, general election ballot. A declaratory judgment was also sought to declare the Communist Control Act of 1954, 50 U.S.C. Secs. 841 and 842 unconstitutional and void in that it violates the following provisions of the United States Constitution: Article 1, Section 9, Clause 3; Article 1, Section 10, Clause 1: Article 2, Section 1, Clause 2; and the First, Fifth, and Fourteenth Amendments to the United States Constitution (A. 4).

The following parties were plaintiffs below and are appellants in this appeal:

Mrs. Charlene Mitchell, the duly nominated candidate of the Communist Party for the office of President of the United States in the 1968 presidential election; the Communist Party, USA, an unincorporated association, a national political party which has as its principal place of business New York, New York; the Communist Party of Minnesota, an unincorporated association, which has as its principal place of business Minneapolis, Minnesota and is the Minnesota-Dakotas division of the Communist Party of the United States; Mrs. Betty M. Smith, Secretary of

the Communist Party of the State of Minnesota; ten presidential electors duly qualified according to Minnesota law and duly qualified and approved by the Communist Party, USA and the Communist Party of Minnesota; Mr. Earl Sorg and Mrs. Lynn Stein, citizens of the United States and eligible voters in the state of Minnesota, signers of the nominating petition, representing themselves and the class of 2,394 eligible voters of the state of Minnesota who signed the nominating petition; Mr. Fred Matsch, a citizen of the United States and an eligible voter in the State of Minnesota, who did not sign the nominating petition, representing himself and the class of all eligible voters in the state of Minnesota who have not signed the nominating petition.

On September 17, 1968 appellants filed a motion to convene a three-judge court, for a temporary restraining order, and for temporary relief (A. 51). On September 19, 1968 Chief District Judge Edward J. Devitt issued and filed an order convening a three-judge court (A. 53). On September 24, 1968 Chief District Judge Edward J. Devitt issued and filed a notice to the United States Attorney General, as required by 28 U.S.C. Sec. 2403, advising the U. S. Attorney General as to the constitutionality of an Act of Congress affecting the public interest being drawn in question, and also notice of hearing for temporary injunction, copies of which were enclosed (A. 55).

The three-judge court heard oral argument on September 30, 1968. In accordance with the provisions of 28 U.S.C. §2403, the Attorney General of the United States was advised by the court that he would be permitted to intervene for the presentation of evidence, if evidence were otherwise admissible in the case, and for argument on the question of the constitutionality of the law (A. 57).

Forrest Talbott, Assistant Secretary of State for the State of Minnesota, filed an affidavit which advised the court that October 4, 1968 was the last date on which the state could reasonably be expected to include the appellant party and the appellant candidates on the Minnesota general election ballot (A. 46).

The three-judge court granted a temporary injunction on October 2, 1968 reported at 290 F. Supp. 642 (D. Minn. 1968), which ordered the appellee Secretary of State to accept the appellants' nominating petitions and to place the names of the candidates together with their party designation on the November 5, 1968 general election ballot. The decision was based on a balancing of the equities and did not pass on the merits of appellants' claims. Appellee complied and the appellants' candidates names appeared on the ballot under the designation "Communist Party, USA" as ordered (A. 73).

The following votes were received by minority party candidates in the election:

Wallace and Griffin, American Party, nominated by petition, 66,931 votes;

Holstead and Boutelle, Socialist Workers Party, nominated by petition, 808 votes;

Blomen and Taylor, Industrial Government Party, nominated by petition, 285 votes;

Mitchell and Zagarell, Communist Party, U.S.A., nominated by petition, 415 votes;

Cleaver and Terry, Peace and Freedom Party, nominated by petition, 935 votes;

McCarthy, nominated by petition, 585 votes.

1,606,307 Total Ballots

After the November 5, 1968 general election, appellants moved to amend the complaint, adding paragraphs with a supporting affidavit stating that the Communist Party of Minnesota will participate in future Minnesota elections (A. 58, 62). Appellees moved to dismiss the complaint on the ground of mootness (A. 63). The three-judge court granted the motion to amend the complaint and then dismissed the amended complaint as moot (A. 86).

Summary of Argument

1. The 1968 elections did not moot this case.

The Minnesota Attorney General, at all stages of the litigation below, vigorously defended the constitutionality of the Communist Control Act and has never wavered from the position he took in his opinion to the Secretary of State that the Act bars Communist Party candidates from the ballot. Moreover, subsequent to the election, counsel for the Minnesota Attorney General advised the court below that the Attorney General would probably take the same position in future elections.

As the amended complaint alleges, the Communist Parties of the U. S. and Minnesota intend to field candidates in future elections as they have so frequently done in the past.

The questions of the application and constitutionality of the Communist Control Act are therefore "capable of repetition, yet evading review." Accordingly, the case is not moot.

2. The question of the constitutionality of the Communist Control Act cannot be avoided by interpretation.

It was the position of the United States Attorney in the court below that the provisions of the Minnesota election law permitting candidates of a party which has not gained recognition as an established party to secure a place on the ballot by petition does not confer any right or privilege on the party, but only on the candidates named in the petition. It was therefore argued that 50 U.S.C. 842, terminating the rights of the Communist Party, but not of its candidates, does not bar the latter from the ballot.

This argument cannot withstand analysis. As the United States Attorney acknowledged, enjoyment of the status of an established political party under Minnesota law is a "right" conferred by state law which 50 U.S.C. 842 purports to extinguish. But no political party can secure this right unless candidates of the party are placed on the ballot by petition and poll the requisite number of votes. Availability to an organization of the procedures for obtaining the status of an established political party is as much a "right" as is the right to enjoyment of the status when obtained.

The legislative history of the Act confirms this conclusion. It shows that Congress intended to bar the Communist Party from the ballot in any national, state or local election. Congress drew no distinction between the Party's appearance on the ballot as an established political party and as an aspirant to that status. And given the prevailing Congressional hostility to Communism, it is absurd to suppose that the authors of the Act would have tolerated any such distinction.

3. The Communist Control Act is a bill of attainder and *ex post facto* law.

The Act has all of the features of the classical form of attainder. It contains a legislative finding of guilt against the Communist Party, identified by name, inflicts punishment upon and in effect outlaws the Party by legislative fiat, and does not permit the Party to escape punishment by changing the nature of its activities.

Since the punishment which the Act inflicts on the Communist Party is based on supposed past conduct of the organization, the Act likewise violates the constitutional prohibition against *ex post facto* laws.

4. The Communist Control Act violates the First Amendment.

The Court has held that the right of individuals to associate for the advancement of political beliefs as well as the right of qualified voters, whatever their political persuasion, to cast their votes effectively are protected by the First Amendment. The Act abridges both of these rights.

If the Act's technique of taking away these rights by legislative fiat were constitutionally permissible, any transient majority could perpetuate itself in office by legislating its rivals off the ballot.

5. The Communist Control Act denies substantive due process because of its overbreadth.

The object of Congress in barring the Communist Party from the ballot could only have been to prevent it from using the electoral process for unlawful advocacy or to further unlawful goals. Yet there was no evidence before Congress that the Party had engaged in any such abuses. Moreover, the Act is not confined to the curb of abuse but bars the Party from access to the ballot for peaceable and

legitimate political purposes. Such a sweeping and indiscriminate deprivation is impermissible under the Fifth Amendment.

6. The Communist Control Act denies procedural due process.

The Act flagrantly violates the due process principle that Congress may not deprive an organization of liberty or property without according it a hearing and opportunity to refute the charges relied on to support the deprivation.

7. The Communist Control Act, as applied in this case, is not within the legislative power of Congress.

Art. II, sec. 1, cl. 2 of the Constitution gives the States the exclusive authority to prescribe the qualifications of presidential electors. The role of the Congress under the Constitution is restricted to protecting the right to vote and the right of individuals to stand for public office. It is without power to abridge or qualify these rights.

8. The action of appellees in barring the Communist Party from the ballot denied appellants the equal protection of the law by arbitrarily discriminating against them as compared with other parties, candidates and voters.

ARGUMENT

1. ***Where temporary relief is granted it cannot be claimed that the granting of the temporary relief caused the original action to become moot where a federal statute remains in effect to be used to inhibit the appellants' electoral activities.***

The Communist Control Act of 1954, 50 U.S.C. §§841 and 842, retains the same force and effect it had prior to the 1968 elections. No formal judicial decision on the merits of appellants' constitutional claims has been made which will govern future application of the Communist Control Act to appellants' political plans. Appellees are thus free to repeat their past conduct and to continue to maintain that the Communist Control Act of 1954 prohibits candidates of the Communist Party from appearing on the ballot.

Appellee Minnesota Attorney General published an official opinion ruling that the Communist Control Act, 50 U.S.C. §§841 and 842, bars Communist Party candidates from the ballot and agreed that "any doubts relative to this matter can only be finally resolved by the courts pursuant to appropriate legal proceedings" (A. 49). Moreover, the appellee Attorney General indicated to the court below that he will persist in his view that the Communist Control Act bars the Communist Party from the ballot. In a hearing before Chief Judge Devitt on November 25, 1968, after the election, the following exchange took place:

> The Court: On another subject, I notice that counsel's affidavit says on information and belief he has learned that you, or the attorney general, are going to persist in your viewpoint so that if some other Communist

affiliated people file, you are going to take the same position.

Is there any basis for this information and belief?

Mr. Kyle: I think there probably is. At least there is no new case law which has come down which would, as far as I am concerned, dictate a different result, ultimately (A. 69).

The Minnesota Attorney General, in the litigation below, has vigorously defended the constitutionality of the Communist Control Act and has never wavered from his position that the Act bars Communist Party candidates from the ballot. Except for the single *amicus curiae* brief filed in the litigation below by the United States Attorney for the District of Minnesota, Patrick J. Foley, on September 23, 1968, taking the position that the Communist Control Act does not bar candidates in Minnesota, there is no authority for the proposition that the Communist Control Act does not apply to elections (App. A, *infra*).[1]

Appellee Minnesota Attorney General maintains that the legislative history of the Act bars Communist Party candidates from participating in elections. He cites *Salwen* v. *Rees*, 16 N.J. 216, 108 A.2d 265 (1954) holding that the Communist Control Act was applicable to a New Jersey local election, barring a Communist Party candidate from the election. Appellants agree that this is the only reported decision as to the applicability of the Act to elections.

In his brief below, among other authorities,[2] the appellee Attorney General also cited an opinion of the Attorney

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[1] The position of the United States Attorney is discussed at pp. 25-31, *infra*.

[2] 100 Cong. Rec. 14082, 13837, 14087, 14909, 14092 (daily ed. Aug. 17, 1954); . . . "Federal Anti-subversive Legislation of 1954,"

General for the State of Connecticut, dated January 17, 1964, to support his contention that the Act intended to bar the Communist Party from participation in elections:

> Honorable Ella T. Grasso, Secretary of State,
> 30 Trinity Street, Hartford, Connecticut
>
> Dear Mrs. Grasso:
>
> This is to acknowledge the receipt of your letter dated January 9, 1964, in which you enclosed a photo copy of a letter from Mr. Arnold Johnson, Public Relations Director of the Communist Party, U.S.A., dated January 8, 1964. For your information, this office also received the same letter from Mr. Johnson.
>
> In his letter, Mr. Johnson advises that the Communist Party plans to place candidates on the ballot in this state in the 1964 elections and asks for information concerning our election laws in that regard.
>
> Your question to this office is stated as follows:
>
> "Will you be so kind as to give me your opinion as to the specific laws, if any, which apply to the rights of the Communist Party, or to a Communist candidate to be on the ballot in Connecticut in the November 1964 election."
>
> In 1954, the Congress of the United States passed the Communist Control Act which is now contained in Sections 841-843 of Title 50 of the United States Code.

* * * * *

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55 *Colum. L. Rev.* 631, 706, 709, 724-730 (1955); "The Communist Control Act of 1954," 53 *Mich. L. Rev.* 1153, 1159 (1955); Auerbach, "The Communist Control Act of 1954: A Proposed Legal Political Theory of Free Speech," 23 *U. Chi. L. Rev.* 173, 175 (1956).

> From the above, [Sections 841 & 842] it is crystal clear that the Communist Party has no right to be on the ballot in the elections to be held in Connecticut in November, 1964. The same would hold true for any avowed candidate of said party.
>
> Very truly yours,
>
> /s/ HAROLD M. MULDEY
> *Attorney General*

Thus, the appellee Attorney General has consistently maintained the position that the Communist Control Act is constitutional and bars Communist Party candidates from the ballot, and he has opposed the *amicus curiae* position of the United States which suggested that the Communist Control Act need not bar candidates from the ballot. In the absence of a judicial determination, the only reasonable conclusion is that the same decision will be reached by the appellee Minnesota Attorney General or his successors when Communist candidates run in future elections.

The Communist Party, its predecessors and branches, and Communist Party candidates, have participated in 163 election contests across the country and in Minnesota from 1924 to 1949. These are set forth in App. B, *infra*. As indicated by the opinion of the Connecticut Attorney General, *supra*, the Communist Party attempted, unsuccessfully, to run candidates in the 1964 Connecticut elections. From 1949 to 1968, the Communist Party and Communist Party candidates did not participate in elections. As stated in the affidavit of the Secretary of the Communist Party of Minnesota, "In the 1950's and early 1960's the Communist Party of Minnesota did not participate in state and local

elections because of the repressive political climate" (A. 61).

The next election in which Communist candidates successfully participated was the 1968 Presidential election. Appellants Mitchell and Zagarell appeared, in addition to the Minnesota election, on the Washington State ballot, but under some other designation. Elsewhere in the country they ran as write-in candidates. In 1969, Rasheed Storey and Jesus Colon appeared on the New York City ballot as Communist Party candidates for mayor and comptroller.

This extensive history of participation of the Communist Party and its candidates in elections, and the uncontradicted affidavit of Mrs. Betty M. Smith, stating that the Communist Party will participate in future Minnesota elections, indicates that a controversy still exists that requires judicial resolution to prevent a repetition of the litigation to secure a place on the ballot for Communist candidates.

This Court has consistently granted review and decided election cases after the November 5, 1968 general elections. *Allen* v. *State Board of Elections*, *Fairley* v. *Patterson*, *Bunton* v. *Patterson*, and *Whitley* v. *Williams*, 393 U.S. 544 (1969); *Moore* v. *Ogilvie*, 394 U.S. 814 (1969); *Hadnott* v. *Amos*, 394 U.S. 358 (1969); *Hall* v. *Beals*, 90 S. Ct. 200 (1969); and *Brockington* v. *Rhodes*, 90 S. Ct. 206 (1969). Thus, this Court has not found election cases moot merely because the election has passed.[3] Rather, as this Court

[3] In *Hall* v. *Beals*, *supra*, the case was mooted because the Colorado legislature amended the statute under review after this Court had noted probable jurisdiction. In *Brockington* v. *Rhodes*, *supra*, this Court ruled the case was moot because the petitioner had requested only mandamus, which could not be granted after the election, did not allege that he intended to run for office in the future, and did not sue for himself and others similarly situated as independent voters.

stated in *Moore* v. *Ogilvie, supra,* the fact of the past occurrence of an election does not require dismissal of the complaint based on official practices in that election where there is an indication of future repetition:

> Appellees urged in a motion to dismiss that since the November 5, 1968 election has been held, there is no possibility of granting any relief to appellants and that the appeal should be dismissed. But while the 1968 election is over, the burden which *MacDougall* v. *Green, supra,* allowed to be placed on the nomination of nominees for statewide offices remains and controls future elections, as long as Illinois maintains her present system as she has done since 1935. The problem is therefore "capable of repetition, yet evading review," *Southern Pacific Terminal Company* v. *Interstate Commerce Commission,* 219 U.S. 498, 515.

Although the appellant candidates did appear on the Minnesota general election ballot on November 5, 1968, as they desired, *only the order of the court below made their appearance possible.* But for that order, the appellees, Minnesota Attorney General, and Minnesota Secretary of State, would have continued to refuse to accept appellants' petition for nomination and to place appellants' names on the ballot. Without judicial resolution of the issues presented here, there is no reason to believe that their position will change.

Minnesota election officials will certainly follow the appellee Minnesota Attorney General's opinion advising that the Communist Control Act of 1954, 50 U.S.C. §§841 and 842 bars Communist Party candidates from the ballot. While Attorney General opinions are not binding, they will

be followed by all state officials unless the state official wishes to challenge the ruling by court action, hardly a possibility. Thus without judicial resolution of the merits of appellants' claims, the Minnesota Attorney General ruling will, practically speaking, have the force of law.

Appellees urged the dismissal of this case as moot in view of the fact that temporary relief had placed the Communist Presidential and Vice Presidential candidates on the Minnesota ballot, and that the election was over. The three-judge court agreed:

> In our view, the issues raised by the original pleadings are now moot since the plaintiffs' nominating petitions were accepted and their names and their party designation were placed on the ballot for the 1968 Presidential election (App. 88-89).

But in *Gray* v. *Sanders*, 372 U.S. 368, 375 (1963), this Court stated, in reference to a procedurally similar circumstance:

> . . . [W]e think the case is not moot by reason of the fact that the Democratic Committee voted to hold the 1962 primary on a popular vote basis. But for the injunction issued below, the 1962 Act remains in force; and if the complaint were dismissed it would govern future elections. In addition, the voluntary abandonment of a practice does not relieve a court of adjudicating its legality, particularly where the practice is deeply rooted and longstanding. For if the case was dismissed as moot appellants would be "free to return to . . . [their] old ways." *United States* v. *W. T. Grant Co.*, 345 U.S. 629.

See, e.g., *Bus Employees* v. *Missouri*, 374 U.S. 74 (1963); *South Pacific Terminal Company* v. *I. C. C.*, 219 U.S. 498 (1911); *Carroll* v. *President and Commissioners of Princess Anne*, 393 U.S. 175 (1968); *Bohler* v. *Lane*, 204 F. Supp. 168, 173 (D. Fla. 1962); *Morris* v. *Williams*, 149 F.2d 703, 708 (8th Cir. 1945); *Heilberg* v. *Fixa*, 236 F. Supp. 405, 407 (N.D. Cal. 1964), 381 U.S. 301 (1965); *Friends* v. *United States*, 388 F.2d 579, 581 (D.C. Cir. 1967); and *Tyson* v. *Cages*, 363 F.2d 742, 743 (5th Cir. 1966).

The three-judge court, in its opinions of October 2, 1968 and July 14, 1969, acknowledged that there are serious constitutional objections to the Communist Control Act, 50 U.S.C. §§841 and 842; the U. S. Attorney in his *amicus curiae* brief to the three-judge court admitted that there are serious constitutional objections to the Communist Control Act, 50 U.S.C. §§841 and 842; and Mr. Justice Harlan, in the only case in this Court dealing with the Communist Control Act, 50 U.S.C. §§841 and 842, *Communist Party, U. S. A.* v. *Catherwood*, 367 U.S. 389 (1961), noted serious constitutional objections to the Communist Control Act, 50 U.S.C. §§841 and 842. The merits of appellants' claims should be determined.

2. *50 U.S.C. §842 of the Communist Control Act does not bear the interpretation advanced in the three-judge court below by the United States Attorney for the District of Minnesota as amicus curiae in order to avoid the constitutional questions that this case presents.*

At the request of the court below, the United States Attorney submitted a memorandum on September 23, 1968 for the United States as *amicus curiae*, which sought to avoid the question of the constitutionality of the Communist Control Act by advancing an interpretation of 50 U.S.C. §842 which would make it inapplicable to the case

at bar (A. 78; App. A. *infra*). The memorandum takes the position that since the Communist Party is not an established political party as defined by Minnesota state election law (Minnesota Statutes 200.02, Subd. 7), persons such as appellants Mitchell and Zagarell who seek nomination to public office as its representatives must do so by means of petitions which specify the offices they seek and the party they represent, and which bear the signatures of the requisite number of voters (Minn. Statutes 202.09, 202.10). The U. S. Attorney advances the theory that these state laws allowing nomination by petition confer no right, privilege, or immunity upon the Communist Party, but only upon the individual candidates named in the petition. He argues that since 50 U.S.C. 842 does not purport to terminate the rights of individuals, it does not bar the nomination by petition of candidates who represent the Communist Party. This argument will not withstand analysis and is belied by the legislative history of the Communist Control Act.

The memorandum acknowledges, as it must, that enjoyment of the status of an established political party, as defined by Minnesota Statutes 200.02, Sub. 7, is a "right" conferred by state law and is therefore within the ambit of 50 U.S.C. 842 of the Communist Control Act. But by the terms of Minnesota Statute 202.02 a party can secure this status only if a candidate polls at least 5% of the statewide vote. A vote for such a candidate, therefore, is likewise "a vote for party enthronement." *Salwen v. Rees*,

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[4] Political parties having this status nominate candidates for presidential electors at party conventions (Minn. Statutes 208.03) and other candidates at party primaries (Minn. Statutes 202.08).

16 N.J. 216, 217.* The opportunity which the election law extends to an organization to seek "enthronement" as an established political party is as much a right as is the right to enjoy all the advantages which the election law gives to occupants of the throne. This must be so, since enjoyment of the latter right is contingent upon the availability to the organization of the procedures for securing it. Accordingly, the Communist Party has a right under Minnesota election-laws as the representative of the candidates named in the petition. It follows that the right is one which 50 U.S.C. §842 of the Communist Control Act, if constitutional, extinguishes.

This conclusion is confirmed by the legislative history of the Communist Control Act, 50 U.S.C. §842.

The Communist Control Act was passed in August, 1954, on the eve of the adjournment of Congress for the national election campaign. It had its origin in the Butler Bill, S. 3706, 83d Cong., 2d Session (100 Cong. Rec. 14097, 1954) to amend the Internal Security Act by making provisions with respect to "communist infiltrated organizations." The text of the section was lifted verbatim from Section 2 of

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*Salwen sought to run for membership on the Board of Chosen Freeholders of Mercer County, New Jersey. The Communist Party not having polled 10% of the votes in the previous election was not entitled to a place on the ballot automatically, but Salwen had obtained the requisite number of names on the nominating petition and requested that the designation "Communist Party" be printed on the ballot next to his name. The lower court upheld the action of the county clerk in refusing to let Salwen's name appear on the ballot, rejecting Salwen's contention that he was running as an individual. The court said: "It is the plaintiff's fault who insists upon identifying himself with the party and becoming its embodiment . . . [He] proclaims himself the candidate of the Communist Party, and proclaims to the electorate that a vote for him is a vote for the party enthronement." The New Jersey Supreme Court affirmed *per curiam* on the oral opinion below.

H.R. 7894, 83d Cong., 2d Session, introduced by Representative Dies. In hearings on his bill, Mr. Dies replied in the affirmative to the question whether it "would remove from the political ballots the Communist Party." Hearings on internal security before subcommittee No. 1 of the House Committee of the Judiciary, 83d Congress, 2d Session, p. 22 (1954).* The same view of 50 U.S.C. §842 of the Communist Control Act was expressed in the floor debates on it. 100 Cong. Rec. 14644 (Representative Celler; *id.* 14653 (Senator Pfost); *id.* 14713 (Senators Kefauver and Butler). Senator Humphrey doubted the power of Congress to exclude the Communist Party from state ballots; *id.* 14717, 14722. But neither he nor any other Congressman questioned that this was the effect of the section.

Thus, "it is clear from the debate that the Act was intended to bar the Communist Party from appearing on the ballot in any national, state or local election." Auerbach, The Communist Control Act of 1954, 23 *U. Chi. L. Rev.* 173, 175. See also comment in 53 *Mich. L. Rev.* 1153, 1159; 64 *Yale L. J.* 712, 738-744 (1955); 55 *Colum. L. Rev.* 631, 706, 709, 724-730 (1955); "The Communist Control Act of 1954," 53 *Mich. L. Rev.* 1153, 1159 (1955). This is the one conclusion that emerges from the otherwise unilluminating history of 50 U.S.C. §842. Cf. *Communist Party* v. *Catherwood*, 367 U.S. 389, 392-93 (1961).

In barring the Communist Party from the ballot, Congress of course drew no distinction between its appearance there as an established political party and as an aspirant to that status. Given the bitter hostility to the Communist Party and Communism evinced by every participant in the

* The text of H.R. 7894 appears at page 8 of these hearings.

debate, it cannot be supposed that the authors of 50 U.S.C. 842 would have tolerated any such distinction had it been called to their attention.

While the United States in its memorandum suggested to the court that the individual candidates could use the designation Communist Party as an espousal of its principles (App. A, *infra*, p. 3a), the memorandum does not face up to the question of whether the Communist Party as a political party in Minnesota could enjoy the rights and privileges as conferred in Minnesota election laws as explained above.

What remains to be shown is that the Communist Party as a political party has a constitutional right to participate in the benefits conferred by the Minnesota election laws, and that, by denying these rights, the Communist Control Act is unconstitutional.

This Court has consistently held that the right to vote is protected by the Constitution. *See Wiley* v. *Sinkler*, 179 U.S. 58 (1900); *Swafford* v. *Templeton*, 185 U.S. 487 (1902); *U. S.* v. *Classic*, 313 U.S. 299, 314-316 (1941); *Baker* v. *Carr*, 369 U.S. 186 (1962); *Reynolds* v. *Sims*, 377 U.S. 533 (1963); *Carrington* v. *Rash*, 380 U.S. 89 (1965); *Davis Assessor-Collector of Taxes, Bexar County, Texas, et al.* v. *Mabry et al.*, 380 U.S. 251 (1965), affirming 232 F. Supp. 930 (1965); *Ray* v. *Blair*, 343 U.S. 214 (1952); and *Harmon* v. *Forssenius*, 380 U.S. 528 (1965).

As has been shown, political parties and organizations in Minnesota have rights under Minnesota election laws as do individual candidates running for office. It is elementary that a substantial part of the electoral process in this country is founded on the participation by political parties

in the political process by the endorsement and identification of candidates as political party candidates. The Minnesota election law structure authorizes participation of political parties in the electoral process as well as participation of individual candidates. Thus the conclusion is inescapable that the political party's right to participate is as much a right as the individual's right to participate. See *Williams* v. *Rhodes*, 393 U.S. 23 (1968).

Even in *Salwen, supra*, where the plaintiff urged that the Communist Control Act did not apply because the Party was not a plaintiff, the court found that the Act did apply because the Communist Party could run candidates in the election without Party designation. Even under these circumstances, the court was:

> . . . impressed with the idea that this particular method, as chosen by the plaintiff, is a keen way of circumventing the statute, because if it were valid for him to take the course that he has chosen, it would be valid for a complete set of candidates to do the same thing, the consequences of which, of course, would be to frustrate completely the designs of the federal law. (108 Atl. 2d at 266.)

Of course in the case at bar, the Communist Party, USA, and the Communist Party of Minnesota are appellants. They both would be deprived of their constitutionally protected rights to run candidates in Minnesota if the appellees' action is allowed to stand, and the appellant organizations have standing to seek redress of this denial of their rights. See *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123 (1951). Thus, this case, unlike *Communist Party* v. *Catherwood, supra*, permits no escape from

facing up to the constitutional questions which 50 U.S.C. §842 presents.

3. *The Communist Control Act, 50 U.S.C. §§841 and 842 is an unconstitutional bill of attainder and ex post facto law.*

The Act is a classical bill of attainder:

1. The Act outlaws the Communist Party by legislative fiat,
2. The Act makes a legislative finding of guilt,
3. The Act inflicts punishment, and,
4. The Act allows no escape from its provisions, even if the Communist Party changes its character as defined by the Act.

There are few governmental practices which are more oppressive of individual liberty than the imposition of bills of attainder. The framers of the Constitution had fresh in their minds the oppressive English practice whereby a man guilty of crime was put beyond protection of the law. Pollock and Maitland, *History of English Law*, vol. 1, p. 476, vol. 2, p. 449 (2d ed. 1923).

The so-called "findings of fact" in 50 U.S.C. §841 of the Communist Control Act are unprecedented in our law but find their counterpart in the abhorrent test-oath laws of the Tudor period in England. For example, the law 35 Eliz. c. 2 was supported by this finding of fact:

> Sundry wicked and seditious Persons, who terming themselves catholicks, and being indeed Spies and intelligencers, . . . and hiding the most detestable and devilish Purposes under a false Pretext of Religion and Conscience, do secretly wander and shift from

> Place to Place within this Realm, to corrupt and seduce her Majesty's Subjects, and to stir them to Sedition and Rebellion.

For a further treatment of the Catholic-Protestant and Protestant-Catholic conflicts in which there was widespread use of bills of attainder, see the appendix to Justice Black's concurring opinion in *Joint Anti-Fascist Comm.* v. *McGrath*, *supra*.

Nor was the practice limited to England and Ireland. In Massachusetts, in 1656, a law was enacted which provided:

> Whereas there is an accursed set of heretics lately risen up in the world, which are commonly called Quakers, who take upon them to be immediately sent of God, and infallibly assisted by the spirit, to speak and write blasphemous opinions despising government, and the order of God in church and commonwealth, speaking evil of dignities, reproaching and reviling magistrates and ministers. . . .

The statute then provided that on the arrival of such Quakers, they were to be severely whipped and confined to hard labor in the House of Correction. Chandler, *American Criminal Trials*, pp. 35-36 (1844).[7] It is understandable, therefore, that the provisions outlawing bills of attainder were adopted by the Constitutional Convention unanimously, and without debate.

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[7] English law gives us an example of similar legislation in the statute suppressing by name the "Societies of United Englishmen, United Scotsmen, United Britons, United Irishmen, and the London Corresponding Society," 39 Geo. III., c. 79 (1799). And compare the legislation in Ireland, suppressing by name the Catholic Association, which advocated the admission of Roman Catholics to full civil and political rights. 10 Geo. IV, c. 1 (1829).

The Communist Control Act has all of the characteristics of a bill of attainder as set forth in *Cummings* v. *Missouri*, 4 Wall. (71 U.S.) 277, 18 L. ed. 356 (1867). This Court there noted three chief characteristics of a bill of attainder: it applies to named individuals, or an easily ascertainable class; it includes a legislative finding of guilt; and it contains a legislatively enacted punishment.[8] The Missouri oath did not apply to named individuals; it applied to an easily identifiable class of people—those who had supported the South during the Civil War. This Court noted that "the bills are generally directed against individuals by name, but they may be directed against a whole class." 4 Wall. (71 U.S.) at 323. *Cummings* specifically rejected Missouri's contention that the oath was not a bill of attainder in that it did not deprive one of "life, liberty or property":

> The deprivation of any rights, civil or political, previously enjoyed, may be punishment; . . . . *Disqualification from office may be punishment.* 4 Wall. (71 U.S.) at 320.
>
> In France, deprivation or suspension of civil rights, or some of them, and among these of *the right of voting, of eligibility to office*, ... are punishments prescribed by her code.
>
> The theory upon which our political institutions rest, is, that all men have certain inalienable rights—that among these are life, liberty, and the pursuit of happi-

[8] The Court said, "In these cases [bill of attainder] the legislative body . . . pronounces upon the guilt of the party, without any of the forms or safeguards of a trial: . . . and it fixes the degree of punishment in accordance with its own notions of the enormity of the offense." 4 Wall. (71 U.S.) at 323.

> ness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to everyone, and that in the protection of all these rights, all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no other wise defined .... 4 Wall. (71 U.S.) at 321 [Italics supplied].[9]

Similarly, in *Ex Parte Garland*, 4 Wall. (71 U.S.) 333 (1867), this Court found that a statute excluding from practice in the federal courts attorneys who had not taken an oath as to their past loyalty to the United States was an unconstitutional bill of attainder. This Court said there that "exclusion from any of the professions or from any of the avocations of life for past conduct can be regarded in no other light than as punishment for past conduct." 4 Wall. (71 U.S.) at 377. In *Lovett* v. *United States*, 328 U.S. 303 (1946), this Court applied the bill of attainder prohibition to Section 304 of the Emergency Appropriations Act of 1943 (57 Stat. 431, 450), which provided that none of the funds therein appropriated could be used to pay salaries to three named individuals. The Court reaffirmed earlier bill of attainder cases and made it clear that a bill of attainder could apply to specifically named individuals:

> Section 304 was designed to apply to particular individuals. Just as the statute in the two cases mentioned (*Cummings* and *Garland*), it operates as a legis-

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[9] This Court also found the oath at issue to be an ex post facto law. Inasmuch as 50 U.S.C. §§841 and 842 punish the Communist Party by stripping it of all "rights, privileges and immunities" solely on the basis of a legislative determination based upon supposed past conduct of that named organization, the Act is an ex post facto law prohibited by the Constitution. *Cummings* v. *Missouri*, *supra*, *Ex Parte Garland*, 4 Wall. (71 U.S.) 333 (1867) and *Fletcher and Peck*, 6 Cranch 87, 3 L.ed. 162.

lative decree of perpetual exclusion from a chosen vocation. This permanent proscription from any opportunity to serve the government is punishment, and of a most severe type."

Recently, this Court found a bill of attainder in *U. S.* v. *Archie Brown*, 381 U.S. 437 (1965), holding unconstitutional Section 504 of the Labor Management Reporting and Disclosure Act (1959), which made it a crime for a member of the Communist Party to serve as an officer of a union. Archie Brown was an avowed Communist who had been elected to the executive board of Local 10 of the International Longshoremen's and Warehousemen's Union for consecutive one year terms in 1959, 1960 and 1961. He was convicted in 1961 for violation of Section 504. The Court reaffirmed *Cummings*, quoted at 381 U.S. at 448 and *Lovett*, quoted at 381 U.S. at 448-449.

And in *American Communications Assoc.* v. *Douds*, 339 U.S. 382 (1949), this Court said that Section 9(h) of the National Labor Relations Act which required union officers to file with the board an affidavit that they were not members of the Communist Party was not a bill of attainder, noting that a member of the Communist Party could escape the provision by resigning.

The Communist Control Act clearly fits the three tests of a classical bill of attainder and it meets the *Douds* criteria that the Communist Party can do nothing to escape the provisions of the Act. The Act meets the first criterion inasmuch as the organization is named: 50 U.S.C. §842 provides, "the Communist Party of the United States, or any successors of such party, regardless of the assumed name, . . . are not entitled to any of the rights, privileges

and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof." And in the "findings of fact" in 50 U.S.C. §841, there is the flat conclusion in the final sentence, "Therefore, the Communist Party should be outlawed." The second criterion of a legislative finding of guilt is squarely met. In 50 U.S.C. §841, Congress "finds and declares" that the Communist Party is "in fact an instrumentality of a conspiracy to overthrow the government of the United States." And Congress finds that the Communist Party is dedicated "to the proposition that the present Constitutional government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear, present and continuing danger to the security of the United States." And in 50 U.S.C. §842 Congress finds that the Communist Party's "object or purpose is to overthrow the government of the United States." There is no comparable example, in the entire history of the United States, of such a flat legislative finding of guilt in the absence of a judicial trial. Finally, the third criterion of punishment inflicted is abundantly fulfilled. 50 U.S.C. §842 provides:

> The Communist Party, . . . or any successors of such Party regardless of the assumed name . . . are not entitled to any of the rights, privileges and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivisions thereof; and whatever rights, privileges and immunities which have heretofore been granted to said Party or to any subsidiary organization by reason

> of the laws of the United States, or any political subdivision thereof, are terminated.

See also *Fleming* v. *Nester*, 363 U.S. 603, 614 (1960); *Communist Party, U.S.A.* v. *Subversive Activities Control Board*, 367 U.S. 1 (1961).

The United States, in its memorandum below, also indicated that the Act is an illegal bill of attainder:

> Perhaps the most obvious challenge to Section 3 of the Communist Control Act is that it operates as a "bill of attainder." Unlike the Subversive Activities Control Act, it abrogates rights by "legislative fiat" (*Communist Party* v. *Catherwood*, 367 U.S. at 394), without trial or hearing. And subject is directly identified by name. If the consequences for the Party and its members may properly be characterized as punishment, the provision would "seem to work an impermissible attainder." (See *U. S.* v. *Brown*, 381 U.S. 437) (App. *infra*, p. 5a).

This position of the Justice Department is not new. On March 9, 1948, the U. S. Department of Justice sent a letter to the chairman of the Committee on House Administration, which was at the time considering legislation aimed at restricting the activities of the Communist Party. The bill under consideration (H.R. 4482) would have banned from the ballot in any election in the United States all political parties directly or indirectly affiliated with the Communist Party of the United States, Communist International, or any other foreign agency which advocates forceful overthrow of the government. The Justice Department letter said (quoted in Note, 34 U. Va. L. Rev. 450):

> Although this Department is in complete sympathy, of course, with the desire that no subversive or disloyal person should be permitted to hold a position of honor, trust or profit in the government, it is believed that the bill under consideration would be of doubtful validity and enforceability for several reasons, the most outstanding of which are that it might be regarded as in the nature of a bill of attainder, a denial of due process of law, and an attempt by the federal government to legislate, in so far as it would apply to the qualifications of a political party in any election, in a field for which no Federal authority exists.

It is abundantly clear that the Communist Control Act §§841 and 842, is a bill of attainder. This Court should invalidate it.

4. *The Communist Control Act, 50 U.S.C. §§841 and 842 violates freedom of speech, press, assembly and petition.*

The Communist Control Act, 50 U.S.C. §§841 and 842, violates freedom of speech, press, assembly and petition.

The Court held only last term that "the two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively" are guaranteed by the First Amendment. *Williams* v. *Rhodes*, 393 U.S. 23, 30-31; and see also at 38-39 (concurring opinion). The Communist Control Act abridges both of these rights.

Minority political parties participate in the electoral process to espouse their political ideology and to propose

solutions for the problems that face society. By such participation, they can obtain a larger and more attentive audience than they could through the use of other less effective vehicles for public debate.

Freedom of speech does not exist in a vacuum. The right to speak implies the right to be heard. Historically, one of the significant ways in which minority parties and minority party ideologies have been heard is in their participation in local, state and federal elections. The importance of "third" or minority parties has been pointed out by William Hesseltine (*Third Party Movements in the United States* (1962) at pp. 13, 100):

> Frequently, third parties were the vehicle through which a new idea or policy was launched and tested. When a new proposal met a favorable reception, it was adopted by a major party. . . .
>
> Perhaps the major role that third parties have played has been that of promoting new governmental ideas and programs. Many reforms which were first offered by third parties were, in time, and after they had received wide popular approval, accepted and put into operation by the major parties.

This Court has repeatedly stressed that the purpose of the freedoms of speech, assembly, press and petition is to insure dissemination of the widest possible range of political, social and economic views. *Associated Press* v. *U. S.*, 326 U.S. 1 (1944); *Stromberg* v. *California*, 283 U.S. 35 (1931). Further, the First Amendment protects advocacy not only of the orthodox but also "unorthodox ideas,

controversial ideas, even ideas hateful to the prevailing climate of opinion." *Roth* v. *United States,* 354 U.S. 476 (1957).

By stripping the Communist Party of "all rights, privileges and immunities" Congress has attempted to extinguish its free speech and that of its members by destroying its organization. This it cannot do. "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as more than once this Court has recognized by remarking upon the close nexus between the freedoms of speech and assembly." *NAACP* v. *Alabama,* 357 U.S. 449, 460 (1958).

This Court has specifically recognized the right of citizens to advocate communism by speech, press and the ballot. In *Harisiades* v. *Shaughnessy,* 342 U.S. 580, 592 (1952), Mr. Justice Jackson speaking for the Court said:

> Our Constitution sought to leave no excuse for violent attack on the status quo by providing a legal alternative—attack by ballot. To arm all men for orderly change, the Constitution put in their hands a right to influence the electorate by the press, speech and assembly. This means freedom to advocate or promote communism by means of the ballot box, but it does not include the practice or incitement of violence.

Equally protected by the First Amendment is the right of the citizen to express his viewpoint through voting for a particular candidate or party. Citizens do not have this right if parties and candidates which espouse viewpoints

which they wish to support are banned from the electoral process.[10]

It must be remembered that *Speiser* v. *Randall*, 357 U.S. 513 (1958) decided that where a statute implicates First Amendment rights, a person who claims benefits under it may not be required to prove that he is a fit person to enjoy them—it is the government which must bear the burden of proving the contrary. The Act goes far beyond the statute invalidated in *Speiser* by dispensing altogether with proof of the Communist Party's unfitness and substituting a legislative fiat. If this were permissible, a transient majority could perpetuate itself in office by legislating its rivals off the ballot on the basis of a similar fiat. The First Amendment does not countenance such a result.

5. *The Communist Control Act, 50 U.S.C. §§841 and 842, violates due process of law as protected by the due process clause of the Fifth Amendment by not being reasonably restricted to the evil which it purports to control.*

Governmental regulation must have a real and substantial relation to the object sought to be attained, and legislation not reasonably restricted to the evil with which it is said to deal violates due process. *Nebbia* v. *New York*, 291 U.S. 502, 525 (1934) and *Butler* v. *Michigan*, 352 U.S. 380, 383 (1957).

The object sought to be attained by Congress in barring the Communist Party from the ballot could only have been to prevent the Party and its candidates from using the electoral process as a means of engaging in unlawful ad-

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[10] See *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370 (1886); *Wesberry* v. *Sanders*, 376 U.S. 1 (1964); *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250-251 (1957).

vocacy or furthering unlawful goals. Yet, although the Party has a long history of running candidates for public office (App. B, *infra*), there was no evidence before Congress that the Party employed election campaigns for any illegitimate purpose. Congress held no hearings on the subject and no such evidence was adduced or referred to in the floor debate.

Moreover, the prohibition of the Communist Control Act is not limited to curbing abuses of the electoral process by the Communist Party. It bars the Party from access to the ballot for peaceable and legitimate political purposes. The Act therefore violates the principle that, "[T]he legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed." *De Jonge* v. *Oregon*, 299 U.S. 353, 364-65 (1937). The Act, in disregard of this precept would "burn the house to roast the pig." *Butler* v. *Michigan, supra*, at 383.

The Communist Control Act, in effect, establishes an irrebuttable presumption that the Communist Party and its candidates, if allowed to appear on the ballot, will use their appearance to further unlawful objectives. This presumption is contrary to experience and flies in the face of decisions of the Court. For, whatever else may be charged against the Communist Party, it undeniably engages in peaceable advocacy and political activity. *Noto* v. *United States*, 367 U.S. 290, 299 (1961). And knowledge of unlawful purposes of the Party or an intent to effectuate them may not be imputed to individuals solely because of their membership in the organization. *Aptheker* v. *Secretary of State*, 378 U.S. 500 (1964); *United States* v. *Robel*, 389 U.S. 258 (1967); *Keyishian* v. *Board of*

Regents, 385 U.S. 589 (1967). Much less may such knowledge and intent be imputed to candidates of the Party solely by virtue of their candidacies.

Aptheker v. *United States, supra,* is controlling here. That case invalidated section 6 of the Subversive Activities Control Act which prohibited members of the Communist Party from applying for or using passports. The Court noted (at 511) that the section "establishes an irrebuttable presumption that individuals who are members of the specified organizations will, if given passports, engage in activities inimical to the security of the United States." It found, however (at 514), "that our national security can be adequately protected by means which, when compared with §6, are more discriminately tailored to the constitutional liberties of individuals." Accordingly, this Court held the section unconstitutional because (at 514) it "sweeps too widely and too indiscriminately across the guarantees in the Fifth Amendment." The Communist Control Act violates the Fifth Amendment for the same reason.

6. *The Communist Control Act, 50 U.S.C. §§841 and 842, violates procedural due process of law.*

Government may not take away liberty or property without providing certain fundamental procedures of fairness. The Fifth Amendment prohibits Congress from depriving an organization of liberty or property without according it a hearing on the charges against it which are relied upon to support the deprivation. As this Court said in *Joint Anti-Fascist Refugee Comm.* v. *McGrath, supra*:

> This Court is not alone in recognizing that the right to be heard before being condemned to suffer grievous

> loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society. (At 168, concurring opinion.)

The Communist Control Act does not provide any procedural safeguards to those to be punished, not even a hearing. Instead, 50 U.S.C. §841 finds that "the Communist Party is a criminal conspiracy designed to overthrow the United States government," and 50 U.S.C. §842 deprives that organization of "all rights, privileges, and immunities" by legislative fiat.

A legislature may not substitute its own finding of fact for proof at a hearing of any fact required to support charges. *McFarland* v. *Amer. Sugar Refining Co.,* 241 U.S. 79 (1916); *Manley* v. *Georgia,* 279 U.S. 1 (1929); and *Tot* v. *United States,* 319 U.S. 463 (1943).

The Communist Control Act violates this principle. The denial of due process could not be more flagrant.

7. *The Communist Control Act of 1954 is not within the legislative power of Congress.*

Article 2, Section 1, Clause 2 of the U. S. Constitution provides:

> Each State shall appoint, in such Manner as the Legislature thereof may direct; a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

This provision of the Constitution removes the power of the federal government to interfere with the qualification of federal presidential electors. Both the Minnesota Attorney General and the U. S. Attorney argued below that the Communist Control Act infringes upon the power of the states in this regard. Appellants agree, inasmuch as the role of Congress under the Constitution is restricted to protecting the right to vote and the right of individuals to seek public office. It is without power to abridge or qualify these rights. *McPherson* v. *Blacker,* 146 U.S. 1 (1902).

Congress has, of course, undertaken to protect the right to vote by federal laws designed to prevent certain corrupt practices in regard to federal elections. This is the proper role of the federal government in guaranteeing the integrity of the right of the citizen to vote as protected by the U. S. Constitution, and does not contravene Article 2, Section 1, Clause 2. In *Burroughs and Cannon* v. *U. S.,* 290 U.S. 534 (1934) this Court sustained the constitutionality of the federal Corrupt Practices Act of 1925 against a challenge that it contravened Article 2, Section 1, Clause 2 of the U. S. Constitution. This Court cited *In re Green, supra,* for the proposition that presidential electors are not officers or agents of the federal government and held that Congress had the power to pass appropriate legislation to *safeguard* such an election from the improper use of money to influence the result. This Court also discussed *Ex parte Yarborough,* 110 U.S. 651 (1884), which upheld the constitutionality of a criminal law in a Ku Klux Klan prosecution, which made it a crime to deprive a person of the right to vote for a member of Congress because of race or color or previous condition of servitude. These cases, and the laws they uphold, are clearly distinguishable from the

attempt by Congress through the Communist Control Act of 1954 to bar any candidate of the Communist Party from the ballot and thereby deprive citizens of the right to vote for candidates of their choice.

8. *The action of the appellees in refusing to accept the nominating petitions from appellants denied them of equal protection of the law.*

An unfair discrimination operating to deprive someone of the right to vote is a deprivation of equal protection of the laws as guaranteed by the Fourteenth Amendment. *Baker* v. *Carr*, 369 U.S. 186 (1962); *Reynolds* v. *Sims*, 377 U.S. 533 (1963); *Carrington* v. *Rash*, 380 U.S. 89 (1965). Appellees' attempt to bar appellants from the ballot and to deny the appellant voters of the opportunity of voting for the candidates and the party is a denial of equal protection of the laws. "The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus be denied an equal opportunity to win votes." Mr. Justice Black, *Williams* v. *Rhodes*, 393 U.S. 23 (1968).

CONCLUSION

The judgment below should be reversed and appellants granted appropriate injunctive and declaratory relief as prayed for in the amended complaint.

Respectfully submitted,

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February, 1970

[11] Attorney for the Appellants wishes to thank Mr. Harold Berk, Chairman of the University of Minnesota Law School Law Students Civil Rights Research Council, and the other LSCRRC law students who volunteered legal research during the course of this litigation.

APPENDIX A

Memorandum for the United States as *Amicus Curiae*

IN THE

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

THIRD DIVISION

Civil Action No. 3-68-256

CHARLENE MITCHELL and MICHAEL ZAGARELL, *et al.*,

Plaintiffs,

—VS.—

JOSEPH L. DONOVAN, Secretary of State of Minnesota, *et al.*,

Defendants.

This memorandum is filed at the express request of the Court, notwithstanding the Attorney General's earlier representation that "neither the Federal Government nor any Federal officer is a party to the litigation, nor is there any legal basis for the Government or its agents to be a party herein." In submitting this response, we stress that Section 3 of the Communist Control Act of 1954—which imposes no criminal sanction—is not administered by the Attorney General and that the Department of Justice has had no occasion to apply the provision.

I.

It may be doubted that Section 3 of the Communist Control Act (it is otherwise applicable to State election) controls this case.

On its face, the provision disables the Communist Party only, not its members. All the commentators are agreed that Section 3, of itself, does not affect the qualification of individuals who are Communists—even the most active—to run for elective office. See Auerbach, "The Communist Control Act of 1954: A Proposed Legal-Political Theory of Free Speech," 23 U. of Chi. L. Rev. 173, 175 (1956); Comment, "The Communist Control Act of 1954," 64 Yale L. J. 711, 738, 744-745 (1955); Note, "Federal Anti-Subversive Legislation of 1954," 55 Col. L. Rev. 631, 705-709 (1955). The threshhold question here is whether the plaintiffs, in submitting themselves as candidates, are seeking to *exercise* "rights, privileges [or] immunities" which the Communist Party would enjoy under State law as a "legal body" but for the "outlawing" of the Party by the Communist Control Act. If not, it would seem that the Act is irrelevant.

As we appraise the present situation, the right of plaintiffs Mitchell and Zagarell to appear on the ballot, and the right of the presidential elector claimant to be credited with the votes cast for Mitchell and Zagarell depends in no degree on their status as nominees of the national or local Communist Party. It appears that, as a matter of Minnesota law, they are entitled to stand for office because their names have been submitted in a timely petition signed by the requisite number of qualified voters, and their nomination or endorsement by any established political party or other "legal body" is legally superfluous. If we are correct in this understanding, it would seem to follow that no "right,

privilege, or immunity" of the Communist Party, as such, is herein involved, and that Section 3 of the Act, therefore, has no bite.

It is not apparent why the result should be different if (as we assume) the candidates wish to appear on the ballot under the Communist Party label. In Salwen v. Rees, 16 N.J. 216, 108 A.2d 265, it is true, that circumstance is deemed sufficient to bring the Communist Control Act into play. But that is not an inevitable holding, at least in the present context.

Indeed, as we understand the applicable State law, Minnesota permits (perhaps requires) a 1-to-3 word designation of "the party or political principle" for which the candidate stands. See Minn. Stat. Section 202.10, 208.04. Rather clearly, allowing a candidate to describe himself as "Marxist" or "Stalinist" would merely conform to this disclosure provision without according the Communist Party any right as a political party or even a "legal body." So, also, the label "Communist" would seem to be a permissible description of the "political principle" represented by the candidates. Without undue quibbling, it is difficult to see that it makes a difference if "Communist" is spelled with an initial capital or if the word "Party" is added. Permitting the candidates to so describe his political beliefs does not, in itself, confer any "right, privilege, or immunity" on the Communist Party.

We recognize that the suggested construction of the Communist Control Act does not fully carry out the apparent expectations of some legislators that it would keep Communists off the ballot. See 100 Cong. Rec. 13837, 14082, 14713. But several speakers expressed doubt whether Congress could reach state elections at all (See 100 Cong. Rec.

13836, 14081, 14085, 14090-14091, 14722), and it is difficult to give controlling weight to "unrevealing random remarks" made during the legislative debate, (*Communist Party* v. *Catherwood*, 367 U.S. 389, 390). Moreover, under the broadest reading of the provision, avowed Party members would remain eligible so long as they ran as "independents." Thus, at all events, those who believe they were wholly disabling Communists as political candidates failed in achieving their purpose.

It is important to stress, however, that the construction we have outlined would *not* leave the Communist Party unhandicapped in its attempt to participate in the political process. Because the organization is deprived of any status as a political party or a legal entity it suffers special disadvantages. Most notably, unlike the representatives of bona fide political parties (See. E.G. Minn. Stat. 208.03, 208.04), its nominees do not qualify *as such*, but only if they can earn a place on the ballot independently by securing the necessary supporting signers. This is, of course, a substantial disability.

II.

The suggested construction of Section 3 of the Communist Control Act would lead to a ruling that the provision is no bar to the plaintiffs' candidacy. This would, of course, follow the example of the Supreme Court in *Communist Party* v. *Catherwood*, supra. Applying the "familiar rule that the decision of constitutional question should be avoided wherever fairly possible" (367 U.S. at 392), the Court there unanimously held the Act ineffective to disable the Communist Party from enjoying the benefits of unemployment insurance program. Here, also, we suggest, the Court would

"hesitate long" before adopting an interpretation of the provision that requires resolution of "difficult constitutional question" (367 U.S. at 394).

We merely outline some of the construction problems that, in our views, would be presented.

Perhaps the most obvious challenge to Section 3 of the Communist Control Act is that it operates as a "bill of attainder." Unlike the Subversive Activities Control Act, it abrogates rights by "legislative fiat" (*Communist Party* v. *Catherwood*, 367 U.S. at 394), without trial or hearing. And subject is directly identified by name. If the consequences for the Party and its members may properly be characterized as punishment, the provision would "seem to work an impermissible attainder" (See *U. S.* v. *Brown*, 381 U.S. 437).

There are also serious questions under the First Amendment. Insofar as Section 3 of the Act, by purporting to "outlaw" the Communist Party, inhibiting the right of all its members—those who share its illegal aim and those who do not—to join together and enjoy the benefits of organization, it may trespass on the right of group association. See e.g. *U. S.* v. *Robel*, 389 U.S. 258; *Elfbrandt* v. *Russell*, 384 U.S. 11; *NAACP* v. *Alabama*, 357 U.S. 449. Moreover, if Section 3 were construed as barring otherwise eligible candidates for elective office from labelling themselves as adherent of the Communist Party—without regard to their advocacy of the Party lawful objectives—a questionable abridgment of freedom of speech would seem to be involved. See *Whitehill* v. *Elkins*, 389 U.S. 54, construing *Gerende* v. *Election Board*, 341 U.S. 56.

Finally, a reading of the Communist Control Act that would reach this case presents troublesome questions concerning the Congressional power to establish qualifications

for Presidential elector (See U. S. Constitution, Article II, Section 1, CLS. 2. The arguably arbitrary abridgment of the right of citizens to vote and to run for elective office (See Bond v. Floyd, 385 U.S. 116; Carrington v. Rash, 380 U.S. 89).

We do not attempt to resolve the constitutional issue just outlined. There are, of course, arguments on the other side. But, these difficulties, in our views, compellingly suggest a restrictive construction of the Communist Control Act. Section 3 does not in turn control this case. We submit it need not be deemed applicable here.

Respectfully submitted,

PATRICK J. FOLEY
United States Attorney

Dated: September 23, 1968.

APPENDIX B

Candidates of the Communist Party*

1924-1949

In a report of the appellee Minnesota Secretary of State, the following participation of the Communist Party and its predecessors, and of Communist Party candidates in Minnesota, is reported:

Communist Party Vote for President in Minnesota 1924-1940

1924	William Z. Foster—Workers Party	4,427	835,002
1928	William Z. Foster—Workers Communist	4,853	999,823
1932	William Z. Foster—Communist	6,101	1,033,009
1936	Earl Browder—Communist	2,574	1,120,179
1940	Earl Browder—Communist	2,711	1,257,491

By States—Last Election in which Communist Party was on Ballot and Vote

Alabama	1940	509	Idaho	1940	276
Arizona	1932	406	Illinois	1932	15,582
Arkansas	1936	164	Indiana	1936	1,090
California	1940	13,580	Iowa	1940	1,524
Colorado	1940	378	Kansas	1928	320

* In this listing of Communist Party candidates' participation in elections, only partisan elections are reported, where candidates ran expressly as Communist Party endorsed candidates. The list does not include avowed Communists who ran in non-partisan elections, or under designations other than that of "Communist Party."

Connecticut	1940	1,091	Kentucky	1936	204
Delaware	1936	52	Louisiana	Never	
Florida	1928	3,704	Maine	1940	411
Georgia	1932	23	Maryland	1940	1,274
Massachusetts	1940	3,806	Pennsylvania	1940	4,519
Michigan	1940	2,834	Rhode Island	1940	239
Minnesota	1940	2,711	South Carolina	Never	
Mississippi	Never		South Dakota	1932	364
Missouri	1936	417	Tennessee	1936	319
Montana	1940	489	Texas	1940	212
Nebraska	Never		Utah	1940	191
Nevada	Never		Vermont	1940	411
New Hampshire	1936	193	Virginia	1940	71
New Jersey	1940	8,814	Washington	1940	2,626
New York	1936	35,609	West Virginia	1932	444
North Carolina	1936	11	Wisconsin	1940	2,394
North Dakota	1936	360	Wyoming	1936	91
Ohio	1936	5,251			
Oklahoma	Never				
Oregon	1940	191			

1940 On Ballot in 22 states

Moreover, the Communist Party and its predecessors and branches, and Communist Party candidates, have participated in the following elections across the country:

	Year	Office	Candidate
1.	1924	President Workers Party	William Z. Foster
2.	1924	Governor of Wisconsin (Independent Workers Party)	Alanne
3.	1924	Governor of New York	Cannon
4.	1928	President	William Z. Foster
5.	1928	Governor of Wisconsin (Independent Workers Party)	Hayes
6.	1928	U. S. Congress 3rd District (Minn.) (Workers Communist Party)	E. B. Ford
7.	1928	U. S. Congress 4th District (Minn.) (Workers Communist Party)	Maurice Powers
8.	1928	U. S. Congress 5th District (Minn.) (Workers Communist Party)	O. R. Votaw
9.	1928	U. S. Congress 8th District (Minn.) (Workers Communist Party)	Thomas Foley

	Year	Office	Candidate
10.	1929— Nov. 5	U. S. Congress 21st Cong. District New York	Richard B. Moore
11.	1930	Governor of Wisconsin (Independent Communist)	Blair
12.	1930	U. S. Senator Minnesota	Rudolph Harju
13.	1930	Governor of Minnesota	Karl Reeve
14.	1930	Lt. Governor, Minn.	Andrew Roine
15.	1930	Secretary or State Minnesota	Henry Bartlett
16.	1930	Member, Railroad & Warehouse Commission, Minnesota	Nick Maki
17.	1930	U. S. Congress 4th District (Minn.)	A. N. Anderson
18.	1932	President	William Z. Foster
19.	1932	Secretary of State Minnesota	Robert Turner
20.	1932	Governor of Pennsylvania	Cush
21.	1932	Governor of Minnesota	Wm. Schneiderman
22.	1932	Lt. Governor (Minn.)	John Lindman
23.	1932	Attorney General (Minn.)	Thomas Foley

	Year	Office	Candidate
24.	1934	Governor of Wisconsin (Independent Communist)	Childs
25.	1934	U. S. Senator (Minn.)	Alfred Tiala
26.	1934	Governor of Minnesota	S. K. Davis
27.	1934	Secretary of State Minnesota	Robert Turner
28.	1936	President Vice President	Earl Browder
29.	1936	Governor, Massachusetts	Otis A. Hood
30.	1936	Lt. Governor Massachusetts	Paul C. Wicks
31.	1936	Secretary of State Massachusetts	Mary E. Moore
32.	1936	Treasurer (Mass.)	Eva Hoffman
33.	1936	Auditor (Mass.)	Alfred Haase
34.	1936	Attorney General Massachusetts	Michael Tuysuzian
35.	1936	U. S. Senator Delaware	David Atis
36.	1936	Governor, Michigan	Emery
37.	1936	Governor, New York	Minor
38.	1936	U. S. Congress (1st Cong. Dist.) California	Vernon D. Healey

	Year	Office	Candidate
39.	1936	U. S. Congress (3rd Cong. Dist.) California	Perry Hill
40.	1936	U. S. Congress (4th Cong. Dist.) California	Anita Whitney
41.	1936	U. S. Congress (5th Cong. Dist.) California	Lawrence Ross
42.	1936	U. S. Congress (6th Cong. Dist.) California	Lloyd Harris
43.	1936	U. S. Congress (Cong. Dist.) California	Carl B. Patterson
44.	1936	U. S. Congress (11th Cong. Dist.) California	William Ingham
45.	1936	U. S. Congress (13th Cong. Dist.) California	Emma Cutler
46.	1936	U. S. Congress (17th Cong. Dist.) California	John L. Leach
47.	1936	U. S. Congress (19th Cong. Dist.) California	Charles McLaughlin
48.	1936	U. S. Congress 1st Cong. Dist. New Jersey	Charles S. Danenhower

	Year	Office	Candidate
49.	1936	U. S. Congress 8th Cong. Dist. New Jersey	David Reiss
50.	1936	U. S. Congress At-Large (Ohio)	William P. Sandburg
51.	1936	Governor, Rhode Island	James P. Reid
52.	1936	Auditor General Pennsylvania	B. D. Amis
53.	1936	State Treasurer Pennsylvania	Pat Toohey
54.	1937	New York City Council	Peter V. Cacchione
55.	1938	U. S. Congress 3rd Cong. Dist. California	Nora Conklin
56.	1938	U. S. Congress 6th Cong. Dist. California	Dave K. Saunders
57.	1938	U. S. Congress 11th Cong. Dist. California	Orla E. Lair
58.	1938	U. S. Congress 13th Cong. Dist. California	Louis Baron
59.	1938	U. S. Congress 15th Cong. Dist. California	Emil Freed
60.	1938	U. S. Congress 16th Cong. Dist. California	La Rue McCormick

	Year	Office	Candidate
61.	1938	Governor of Maine	Winfred V. Tabbutt
62.	1938	Governor of Maryland	Samuel Gordon
63.	1938	U. S. Senator Maryland	Harry Straw
64.	1938	Governor, Massachusetts	Otis Archer Wood
65.	1938	Governor, New Hampshire	Mrs. Elba M. Chase
66.	1938	U. S. Senator New Jersey	William Norman
67.	1938	U. S. Congress 1st Cong. Dist. New Jersey	John F. Norman
68.	1938	U. S. Congress 8th Cong. Dist. New Jersey	Manuel Cantor
69.	1938	U. S. Congress 10th Cong. Dist. New Jersey	Rose Risk
70.	1938	U. S. Congress 11th Cong. Dist. New Jersey	Lillie Brewer
71.	1938	U. S. Congress 12th Cong. Dist. New Jersey	Morris Friedal
72.	1938	U. S. Congress 13th Cong. Dist. New Jersey	Jay Anyon

	Year	Office	Candidate
73.	1938	Governor Rhode Island	A. Kominsky
74.	1938	U. S. Senator Pennsylvania	Pat Toohey
75.	1938	Governor, Pennsylvania	Ella Bloor Omholt
76.	1938	Lt. Governor Pennsylvania	Ben Careathers
77.	1938	Lt. Governor Massachusetts	Manuel Blank
78.	1938	Secretary of State Massachusetts	Hugo DeGregory
79.	1938	Treasurer Massachusetts	Frank Asher
80.	1938	Auditor, Massachusetts	Mike Tuysuzian
81.	1938	Attorney General Massachusetts	Joe Figueiredo
82.	1938	U. S. Senator Indiana	Blansett
83.	1938	Governor, Texas	Brooks
84.	1938	U. S. Senator Wisconsin	Blair
85.	1940	President Vice President	Earl Browder James W. Ford
86.	1940	Governor. California	Whitney

	Year	Office	Candidate
87.	1940	U. S. Senator Connecticut	Wofsy
88.	1940	Governor, Iowa	Speck
89.	1940	U. S. Senator Massachusetts	Frankfeld
90.	1940	Governor Massachusetts	Hood
91.	1940	Governor, Michigan	Raymond
92.	1940	U. S. Senator Michigan	Johnson
93.	1940	Governor, New Jersey	Cantor
94.	1940	U. S. Senator New Jersey	Dooner
95.	1940	U. S. Senator Pennsylvania	Reeve
96.	1940	U. S. Senator, Texas	Brooks
97.	1940	Governor, Washington	Brockway
98.	1940	Governor, Wisconsin	Blair
99.	1940	U. S. Senator Wisconsin	Furman
100.	1940	Lt. Governor Massachusetts	Hugo De Gregory
101.	1940	Treasurer Massachusetts	Henry Grossman
102.	1940	Auditor, Massachusetts	Arthur Buckley

	Year	Office	Candidate
103.	1940	U. S. Congress 1st C. D. (Calif.)	Albert J. Lima
104.	1940	U. S. Congress 3rd C. D. (Calif.)	Charles Cricus
105.	1940	U. S. Congress 4th C. D. (Calif.)	Archie Brown
106.	1940	U. S. Congress 5th C. D. (Calif.)	Walter R. Lamber
107.	1940	U. S. Congress 6th C. D. (Calif.)	Clarence Patton
108.	1940	U. S. Congress 7th C. D. (Calif.)	Alfred N. Johnson
109.	1940	U. S. Congress 8th C. D. (Calif.)	Elizabeth Nichols
110.	1940	U. S. Congress 10th C. D. (Calif.)	Louretta Adams
111.	1940	U. S. Congress 11th C. D. (Calif.)	Orla E. Lair
113.	1940	U. S. Congress 12th C. D. (Calif.)	Albert Lewis
112.	1940	U. S. Congress 14th C. D. (Calif.)	Pettis Perry
114.	1940	U. S. Congress 15th C. D. (Calif.)	Emil Freed
115.	1940	U. S. Congress 16th C. D. (Calif.)	George C. Sandy

	Year	Office	Candidate
116.	1940	U. S. Congress 18th C. D. (Calif.)	George R. Ashby
117.	1940	Governor, Connecticut	Michael A. Russo
118.	1940	U. S. Senator Maryland	Albert E. Blumberg
119.	1940	Governor, Montana	Arvo Frederickson
120.	1940	U. S. Congress 9th C. D. (New Jersey)	John F. Norman
121.	1940	Auditor General Pennsylvania	Paul
122.	1940	Governor, Texas	Ben H. Lauderdale
123.	1940	U. S. Senator Minnesota	Carl Winter (write-in)
124.	1940	Governor, Minnesota	Martin Mackie
125.	1940	Lt. Governor, Minn.	William Herron
126.	1940	Secretary of State	Clark Jorgenson
127.	1940	Governor, West Virginia	Oscar Wheeler
128.	1941	Brooklyn, N. Y. City Council	Peter V. Cacchione (Elected)
129.	1941	City Council	Israel Amter
130.	1942	Governor, Alabama	Southard
131.	1942	Governor, Colorado	Dietrich
132.	1942	U. S. Senator, Colorado	Allander
133.	1942	Governor Massachusetts	Hood

	Year	Office	Candidate
134.	1942	Governor of Wisconsin	Blair
135.	1942	U. S. Congress	Morris Graham
136.	1942	U. S. Congress 4th C. D. (Minn.)	Rose Tillotson
137.	1942	Governor Minnesota	Martin Mackie
138.	1942	Member, Railroad & Warehouse Commission Minnesota	Robert J. Kelly
139.	1943	N. Y. City Councilman	Peter V. Cacchione (Elected)
140.	1943	N. Y. City Councilman	Benjamin J. Davis, Jr. (Elected)
141.	1945	N. Y. City Councilman	Peter V. Cacchione (Elected)
142.	1945	N. Y. City Councilman	Benjamin J. Davis, Jr. (Elected)
143.	1946	U. S. Senator Michigan	Beiswenger
144.	1946	Governor, Wisconsin	Eisenscher
145.	1946	Attorney General New York State	Benjamin J. Davis, Jr.
146.	1946 Nov. 5	Comptroller New York State	Robert Thompson
147.	1946	City Council Borough of Queens N. Y.	Charles Evans

	Year	Office	Candidate
148.	1946 Nov. 5	U. S. Senator Michigan	Hugo Beiswenger
149.	1946	U. S. Congress 2nd C. D. (Mich.)	Robert Cummins
150.	1946	U. S. Congress 16th C. D. (Mich.)	William Allan
151.	1946	State Senator 3rd Dist. (Mich.)	Carneller Foreman
152.	1946	State Senator 4th Dist. (Mich.)	Walter Dunn
153.	1946	State Senator 11th Dist. (Mich.)	Stanley Adamske
154.	1946	State Representative 2nd Dist., Washtenaw County, Michigan	Thomas A. Dennis
155.	1946	State Representative 1st Dist., Genesse County, Michigan	Thomas Kelley
156.	1946	State Representative 1st Dist., Wayne County, Michigan	Fred Williams
157.	1946	State Representative 1st Dist., Wayne County, Michigan	Gerald R. Boyd
158.	1946	State Representative 1st Dist., Wayne County, Michigan	Helen Allison Winter

	Year	Office	Candidate
159.	1946	Commission Council Member, New Orleans, La.	Emanuel Levin
160.	1947 Nov. 6	N. Y. City councilman	Simon W. Gerson
161.	1948	Mayor of Mpls., Minn. Primary election	Robert J. Kelly
162.	1948	New York City Councilman	Simon W. Gerson
163.	1949	N. Y. City Councilman	Benjamin J. Davis, Jr.